

APPENDIX M
COLLABORATIVE ALTERNATIVE
FORMULATION AND REVIEW PROCESS

APPENDIX M: Collaborative Alternative Formulation and Review Process

This appendix provides a detailed description of the collaborative alternatives formulation process among ECG, the Environmental Impact Statement (EIS) contractor (Science Applications International Corporation [SAIC]) and the principal regulatory agencies consisting of representatives of the Walla Walla District USACE, United States Environmental Protection Agency (USEPA), Idaho Department of Environmental Quality (IDEQ), U.S. Fish and Wildlife Service (USFWS), and the Idaho Department of Lands.

A project kick-off meeting and inter-agency coordination and consultation meeting was held on October 7, 1998 to discuss issues, scoping, schedule and ECG's proposed action (mining plan). Subsequent to this meeting, ECG prepared a draft Plan of Operations (March 1999) that discussed the conceptual mining and reclamation plans. On May 18, 1999, ECG, SAIC, and USACE met to discuss factors to be considered in the alternatives analysis and the range of possible alternatives. It was agreed that "other than high flow mining period" alternatives should be considered as periods when mining would not occur as well as mining year round. Other issues discussed were berm design and function, and factors for screening and eliminating alternatives from further consideration from those that would be carried forward in the EIS.

Subsequent to the May 18, 1999 meeting, the EIS contractor prepared a conservative approximate estimate of the sediment yield that might be expected within the watershed of the St. Maries River and a worst case calculation of the potential sediment yield that could come from an annual mining unit and its associated berms during a severe erosion event. The results of the analysis suggested the use of smaller berms that would not significantly inhibit drainage in the floodplain, but would still allow erosion protection from normal runoff events. The analysis also suggested the possibility of eliminating berms after mining and using other Best Management Practices (BMPs) such as crimping straw and mulch, and the placement of LWD, straw bales, silt fences etc. at various locations in the disturbed area to minimize erosion, but not inhibit sheetflow across the floodplain.

Another meeting was scheduled for June 1, 1999 with the USACE to continue to receive comments on the draft Plan of Operations and discuss modifications to the conceptual mining plan. These modifications included reducing berm height and providing an overview of a sediment load study of the basin and proposed mining areas that would show the likely sediment contribution of a failed berm, or of scour from a flood moving through a reclaimed area. The meeting was held in Coeur d'Alene, Idaho between USACE, ECG, and SAIC. The issue of berms in the floodplain was discussed extensively. It was agreed that the following points would allow for the preparation of a mining plan that would result in minimal affect on floodplain hydraulics during flood events:

- Provide additional information on berm height with the height based on berm size required to retain various storm events within the mining unit.
- Provide a berm design using on-site materials; it was agreed that imported materials should not be necessary.
- Berms perpendicular to the floodplain should be no longer than necessary.
- Develop other BMPs that would replace or partially replace berm during the flood prone period.

It was agreed that three alternatives would be carried forward into the EIS, including the No Action Alternative, a 12 month wet/dry panel mining alternative, and possibly an alternative addressing mining during other than high flow period. USACE requested more than 1:1 replacement for wetland restoration. ECG agreed that they could commit to providing additional wetland restoration and replacement on properties that they own; however, it would be difficult to accomplish additional restoration and replacement on other private property. USACE expressed a desire that permanent fencing be established to protect restored wetlands. ECG expressed concern that this would be a very sensitive issue with landowners and may not be feasible. No resolution was reached on this issue.

It was agreed that a new section would be added to the Plan of Operations discussing site-specific, Year One mining and reclamation plans and that the Plan of Operations should be reviewed by other regulatory agencies before the EIS is prepared. It was agreed that a field visit to inspect the proposed permit areas and active mining and restoration as well as discussion of reclamation approaches and concepts and a review of the revised Plan of Operations would be valuable. This field visit was scheduled for August 11, 1999.

The field visit on August 11 was attended by the following agencies: USACE, Walla Walla District and Omaha District, Idaho DEQ, USFWS, and IDL. During the site visit it was agreed that the wetland functions and values assessment did not require application of Habitat Evaluation Process (HEP), Wetland Evaluation Technique (WET) or Hydrogeomorphic Model (HGM), but rather a thorough description of the wetlands. Other issues discussed included: mining low-value wetlands first and then mining high-value wetlands, the feasibility and methods for long-term protection of restored/reclaimed wetlands, mining and avoiding impacts to large trees, coring of trees to determine age, determining the location of garnet grade and high value wetlands, fencing and private landowner mining lease restrictions and limitations for long-term protection, existing cattle grazing impact in riparian areas, tree replacement and size, fencing for five years or larger plantings, avoidance or minimizing impact to oxbows, increasing wetland function, wetland replacement ratios, and performance standards for reestablishment of woody vegetation.

A meeting was held in Boise, Idaho the day after the site visit, August 12, 1999. Attendees consisted of representatives of USACE, USEPA, Boise Office, ECG, IDL, and SAIC. This meeting discussed the issues of wetland avoidance, saving mature tree species (specifically cottonwoods), providing permanent wetland protection, types and extent of wetland reclamation/mitigation, methods of assessing existing wetlands' functions and values, and treating this project as "no net increase" until a Total Maximum

Daily Load (TMDL) is established for the St. Maries River. After this meeting, ECG agreed to look at several issues, and to modify the Draft Plan of Operations:

- ECG would assess avoidance of oxbows during mining. This would entail looking at garnet reserves associated with the oxbows, and determining the effect on production and marketing if the oxbows are not mined.
- ECG would assess means of perpetual protection of reclaimed wetlands. This would include long-term fencing, conservation easements, off-site wetland protection, and mitigation banking. ECG emphasized that property controlled by other landowners must be treated differently than ECG's ownership. Other landowners want to retain the present utility of their property once mining has been completed. ECG has attempted to purchase the property of other private landowners. All private landowners declined to sell.
- ECG would revise the Plan of Operations, providing distinctions between 1:1 reclamation activities and additional activities that are actually mitigation opportunities.
- ECG would investigate the feasibility of assessing wetland functions through a HEP evaluation, or an HGM model.

On August 18, 1999, Seattle and Boise USEPA office personnel met on-site to inspect the proposed mining areas. A final pre-application review was held December 3, 1999 in ECG offices in Coeur d'Alene, Idaho to present and discuss the revised Plan of Operations, including mining alternatives and conceptual reclamation plans. The meeting was attended by representatives of USACE, USEPA, USFWS, Idaho DEQ, ECG, and SAIC. A 50-page handout was prepared and distributed by ECG, detailing aspects of and changes to the Plan of Operations since the meetings in June 1999. During this meeting, discussions focused on reserves and oxbow avoidance, tree retention, flood-prone non-mining period versus use of BMPs, BMP functionality, vegetation removal prior to mining, distinctions between reclamation and mitigation, and permanent protection of reclaimed landscapes. The meeting resulted in the following:

- ECG would look at the tonnage lost from not mining oxbows and oxbow buffers on a percentage basis, and assess the effect of avoidance on overall productivity. It was agreed that oxbow avoidance would become an alternative for consideration in the screening process.
- All parties agreed that the flood-prone non-mining alternative did not need to be carried forward into the EIS. Instead, the use of shutdown protocol for mining based on the functionality of BMPs would be used for all weather conditions. In addition, SNOTEL and other weather data would be assessed as part of the shutdown protocol, to provide an early assessment of potential shutdown conditions.
- BMPs were reviewed and generally determined to be sufficient. It was emphasized that BMPs, especially silt berms, are used to handle storm waters, and are not intended to capture, convey, or alter flood stages. ECG will provide a capacity table for sediment basins.

- ECG would modify the Plan of Operations to demonstrate those activities that are 1:1 in-kind reclamation of the pre-mined state versus mitigation for temporary losses that might include more than 1:1 replacement, out-of-kind replacement, wetland protection, bank enhancement, in-stream structures, banking/easements, etc.
- ECG would assess permanent or long-term wetland protection in terms of what degree of protection is necessary to insure wetland functions return.

ECG completed a revised Plan of Operations in June 2000, and provided SAIC revised information to compile draft Chapters 1 and 2 of the EIS. These chapters were completed and submitted to USACE and USEPA on September 11, 2000, for their review and concurrence before initiating a draft of the remainder of the EIS. Chapter 2 included two 12-month mining alternatives and the No Action Alternative. In Chapter 2, other than high flow mining alternatives were screened out because they did not provide additional environmental protection over and above the 12-month mining alternatives. In this version of Chapter 1 and 2, oxbow avoidance as an alternative was eliminated from further consideration because it was at odds with the economic aspects of the purpose and need and because there are no alternative garnet locations to mine.

USEPA responded to the draft of Chapters 1 and 2 with a letter dated October 27, 2000 with the following primary comments:

- Purpose and Need statement should reflect the need for additional garnet, not ECG's viability as a company.
- An other-than-high-flow mining alternative should be carried forward for detailed analysis in order to examine the full range of mining alternatives available.
- An oxbow avoidance alternative should be carried forward for the same reasons.
- Concern that too much emphasis is placed on ECG's profitability when assessing alternatives.
- The letter also sought clarification/recommendations on meeting dates and text edits.

On November 1, 2000, ECG and SAIC met with USEPA in Boise to discuss the November 27 letter and clarify certain points. ECG followed this meeting with a November 8, 2000 memo to USEPA, USACE, and SAIC, discussing alternative analysis, and other than high flow mining and oxbow avoidance in particular.

On January 26, 2001, ECG, SAIC, and USACE met in Coeur d'Alene to discuss the USACE's comments on the September 11, 2000 draft as well as USEPA's comments, previously discussed. USACE had the following primary comments:

- Purpose and Need Statement should not involve ECG's viability. It should simply be a statement of the need for additional permitted reserves for the world market.

- Other than high flow mining alternatives must be discussed in Chapter 2, but may not carry forward for detailed analysis in the EIS, if the Chapter 2 screening process adequately addresses why.
- Oxbow avoidance must be carried forward, if practical, for detailed analysis in the EIS. Oxbow complexes must be assessed individually. The basis of determining avoidance practicality was discussed, but not resolved.
- The USACE determined that the use of 'profitability', 'economic return', and 'profit margin' were confusing. Other ways of assessing practicality were discussed. ECG said it would develop a new economic analysis for the EIS.

Subsequent to the January 26, 2001 meeting, five conference calls were held (March 8, April 17, May 2, May 14, and June 6, 2001), with ECG and USACE discussing and developing a new economic assessment, determining how to assess oxbow avoidance, and reviewing the need to assess other than high flow mining alternatives in this EIS. On June 6, 2001, USACE and ECG agreed to:

- carry forward two (2) mining alternatives, 12-month wet panel mining, and 12-month wet and dry panel mining, for detailed analysis in the EIS,
- not carry forward any other than high flow mining alternatives,
- carry forward oxbow avoidance alternatives that assess 6 options of individually or cumulatively avoiding one or more oxbow complexes, and
- discuss wetland reclamation, mitigation and protection options in Chapter 2, without excluding any of them from further discussion and analysis.



IDAHO CONSERVATION DATA CENTER



Idaho Department of Fish and Game • 600 South Walnut • P.O. Box 25, Boise, Idaho 83707 • (208) 334-3402 • FAX 334-2114

January 28, 1999

Kurt Dostal
Wildlife Habitat Institute
1025 E. Hatter Creek Road
Princeton, ID 83857

Dear Mr. Dostal:

I am responding to your request for any known Coeur d'Alene salamander occurrences near T43N R1E, Sections 5, 8, 9, 15, and 16. There is one known occurrence about 4 miles SW of the area indicated in your request. A copy of the record from our database is enclosed.

If you have any questions regarding this request, please feel free to contact me.

Sincerely,

Stephanie Mitchell

Information Management Technician

Idaho Conservation Data Center
Idaho Department of Fish and Game
January 28, 1999
For: Wildlife Habitat Institute

Coeur d'Alene Salamander

Record No. 064
Scientific Name: PLETHODON IDAHOENSIS
Common Name: COEUR D'ALENE SALAMANDER
Federal Status: W
Type of Occurrence: BREEDING POPULATION
First Observed (date): 1989

State Status: SC

Last Observed (date): 1989-04-28

Township Range Section(s) Comments on section(s)

043N.....001E...31.....SE4SE4

Latitude: 470122N Longitude: 1161456W

County: Shoshone

Quad Name: MERRY CREEK

Place Name: CLARKIA

Elevation (ft)

minimum: 2860

maximum:

Location:

Ca 1 mi due N of Clarkia on unnamed road.

Managed Area(s):

IDAHO PANHANDLE NATIONAL FORESTS

IDAHO PANHANDLE NATIONAL FORESTS, ST. MARIES RANGER DISTRICT

Land Ownership:

St. Joe NF, St. Maries RD, and/or private land.

Habitat:

Seepage of light, dripping flow on E side of road, ca 50 ft above creek to west. Discontinuous wet

area during visit. Scant overstory.

Occurrence Data:

1989: salamanders found beneath Belt rock rubble.

Comments on protection:

Comments:

Site visited again in late June, 1989. No salamanders found; site was mostly dry.

Specimens:

Best Source or Contact:

Wilson, Al



United States Department of the Interior

FISH AND WILDLIFE SERVICE

*Upper Columbia River Basin Field Office
11103 E. Montgomery Drive, Suite 2
Spokane, WA 99206*

November 10, 1998

Tom Duebendorfer
P.O. Box 167
Elmira, ID 83865

Subject: Threatened and Endangered Species List for Emerald Creek Garnet Company
Project (1-9-99-SP-5; 970.0500)

Dear Mr. Duebendorfer:

This responds to your October 15, 1998, request for the subject species list, received in this office on October 21, 1998. The Emerald Creek Garnet Company is proposing a mining project, located within Township 43 North, Range 1 East, Sections 4-6, 8, 9, 15, and 16, near Fernwood, Idaho. We have enclosed a list 1-9-99-SP-5 (Enclosure A) of endangered, threatened, proposed, and candidate species and species of concern that may be present in the proposed project area. The list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act of 1973 (Act), as amended. The requirements for Federal agency compliance under the Act are outlined in Enclosure B. Please reference the species list number on Enclosure A in all subsequent correspondence, reports, environmental assessments, environmental impact statements, biological assessments (evaluations), Coordination Act reports, etc.

If a listed species appears on Enclosure A, preparation of a biological assessment/evaluation (BA) would be prudent. Even if a BA is not prepared, potential project effects on listed species should be addressed in the environmental documentation for this project. If a BA is not commenced within 90 days of this response, verification of the accuracy of the species list request is required by regulations. Should the BA determine that a listed species is likely to be affected adversely by the project, the lead Federal agency (if any) involved in this project should request formal section 7 consultation through this office. If a proposed species is likely to be jeopardized by a Federal action, regulations require a conference between the Federal agency and the Service.

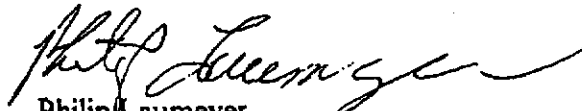
Candidate species and species of concern that appear on Enclosure A have no protection under the Act, but are included for early planning consideration. Proposed species could be formally listed and candidate species could be formally proposed and listed during project planning, thereby falling within the scope of section 7 of the Endangered Species Act. Therefore, if they appear on Enclosure A, we recommend that additional surveys be made for proposed and/or candidate species that are likely to be in the project area. If the project is likely to adversely impact a candidate species, informal consultation with this office is recommended.

The Service recently received a petition to list the westslope cutthroat trout as threatened. Petitioned species receive no protection under the Act. However, a petition is an early step in the

listing process. In its 90-day finding, published in the June 10, 1998 Federal Register (63 FR 31691), the Service found that the petition presented substantial information that listing this species may be warranted. The Service is now surveying the status of the species range-wide, preparatory to making a 12-month finding, due January 25, 1999. You may want to consider the potential effects of the subject project on this species, both to minimize any adverse effect to the species and to simplify consultation responsibilities should the species be proposed or listed before the project is completed.

If you have any questions regarding Federal consultation responsibilities under the Act, please contact Suzanne Audet of this office at (509) 891-6839. Thank you for your continued interest in the Endangered Species Program.

Sincerely,


Philip Laumeyer
Field Supervisor

Enclosures

cc: IDFG, Reg. 1, CdA

Refer to next page

Comments:

1. There are species regulations defining the protection and management of gray wolves designated as nonessential experimental, as outlined in the final rules published in the Federal Register, Vol. 59, No. 223 - November 22, 1994. These regulations include special provisions regarding "take" of gray wolves. For section 7 interagency coordination purposes, wolves designated as nonessential experimental that are not within units of the National Park System or National Wildlife Refuge System are treated as proposed species. As such, Federal agencies are only required to confer with the Service when they determine that an action they authorize, fund, or carry out "is likely to jeopardize the continued existence" of the species.
2. The U.S. Fish and Wildlife Service has been petitioned to list the westslope cutthroat trout as threatened. Petitioned species receive no protection under the Endangered Species Act. However, a petition is an early step in the listing process. The Service has made a positive 90-day finding, published June 10, 1998, in the Federal Register (63 FR 31691), that the petition presented substantial information that listing this species may be warranted. The Service is now surveying the status of the species range-wide, preparatory to making a 12-month finding, due January 25, 1999.

LISTED AND PROPOSED ENDANGERED AND THREATENED SPECIES
AND CANDIDATE SPECIES THAT MAY OCCUR WITHIN THE
AREA OF THE EMERALD CREEK GARNET COMPANY PROJECT
FWS-1-9-99-SP-5

LISTED SPECIES

COMMENTS

Gray Wolf (XN)
(*Canis lupus*)

See Comment 1.

Bull Trout (LT)
(*Salvelinus confluentus*)

Ute ladies'-tresses (LT)
(*Spiranthes diluvialis*)

PROPOSED SPECIES

None

CANDIDATE SPECIES

None

SPECIES OF CONCERN

Westslope cutthroat trout*
(*Oncorhynchus clarki lewisi*)

See Comment 2.

FEDERAL AGENCIES' RESPONSIBILITY UNDER SECTIONS 7(a) AND (c)
OF THE ENDANGERED SPECIES ACT

SECTION 7(a) - Consultation/Conference

- Requires: 1) Federal agencies to utilize their authorities to carry out programs to conserve endangered and threatened species;
- 3) Consultation with FWS when a Federal action may affect a listed endangered or threatened species to insure that any action authorized, funded or carried out by a Federal agency is not likely to jeopardize the continued existence of listed species; or result in destruction or adverse modification of critical habitat. The process is initiated by the Federal agency after determining the action may affect a listed species; and
- 3) Conference with FWS when a Federal action is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat.

SECTION 7(c) - Biological Assessment for Major Construction Activities ^{1/}

Requires Federal agencies or their designees to prepare Biological Assessment (BA) for major construction activities. The BA analyzes the effects of the action^{2/} on listed and proposed species. The process begins with a Federal agency in requesting from FWS a list of proposed and listed threatened and endangered species (list attached). If the BA is not initiated within 90 days of receipt of the species list, the accuracy of the species list should be informally verified with our Service. The BA should be completed within 180 days after its initiation (or within such a time period as is mutually agreeable). No irreversible commitment of resources is to be made during the BA process which would foreclose reasonable and prudent alternatives to protect endangered species. Planning, design, and administrative actions may be taken; however, no construction may begin.

We recommend the following for inclusion in the BA; an onsite inspection of the area to be affected by the proposal which may include a detailed survey of the area to determine if the species are present; a review of literature and scientific data to determine species' distribution, habitat needs, and other biological requirements; interviews with experts, including those within FWS, State conservation departments, universities and others who may have data not yet published in scientific literature; an analysis of the effects of the proposal on the species in terms of individuals and populations, including consideration of cumulative effects of the proposal on the species and its habitat; an analysis of alternative actions considered. The BA should document the results, including a discussion of study methods used, any problems encountered, and other relevant information. The BA should conclude whether or not a listed or proposed species will be affected. Upon completion, the BA should be forwarded to our office.

^{1/} A major construction activity is a construction project (or other undertaking having similar physical impacts) which is a major action significantly affecting the quality of human environment as referred to in the NEPA (42 U.S.C. 4332 (2)(c)).

^{2/} "Effects of the action" refers to the direct and indirect effects on an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action.



Our mission: to educate through the identification, preservation, and interpretation of Idaho's cultural heritage.

Dirk Kempthorne
Governor of Idaho

Steve Guerber
Director

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Fax: (208) 334-4059

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Fax: (208) 334-2775

Historic Sites Office
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Fax: (208) 334-3275

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Boise, Idaho 83713-4250
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Fax: (208) 334-2626

October 15, 1999

Mr. Steve Osburn
Emerald Creek Garnet Company
Route 4 Highway 3
Fernwood, Idaho 83830

RE: Emerald Creek Garnet Company, St. Maries River Project

Dear Mr. Osburn:

In August, our office received a report documenting an archaeological survey of your company's St. Maries River Project, Benewah and Shoshone County, Idaho. We are not certain of the status of this project, and have postponed commenting on the report until we were contacted by the Corps of Engineers. As so much time has passed since we received the report, we have decided to proceed with our review.

The report states that one archaeological site and three isolated artifacts were identified during the survey. After reviewing the information, we agree that site 10BW150, railroad bridge pylons, is *not eligible* for the National Register of Historic Places due to a lack of historical integrity. We also agree that isolates 10BW147, 10BE148, and 10BW149, are *not eligible*.

While we accept these findings, we are concerned that deeply buried archaeological deposits may be present. We therefore support the recommendations provided in the report (page 16) to halt mining and contact our office immediately in the event archaeological remains are encountered. We also urge the company to contract with an archaeologist to conduct annual monitoring of the project. At the same time, the archaeologist should provide *in-field* training with the mining crews to heighten their awareness of cultural resources and ability to identify archaeological materials.

Finally, the Corps of Engineers should consult with the Coeur d'Alene Tribe to understand tribal concerns regarding cultural resources.

We appreciate your cooperation. If you have any questions, feel free to contact me at 208-334-3847.

Sincerely,


Susan Pengilly Neitzel
Deputy SHPO





IDAHO CONSERVATION DATA CENTER



Idaho Department of Fish and Game • 600 South Walnut • P.O. Box 25 Boise, Idaho 83707 • (208) 334-3402 • FAX 334-2114

28 September 1998

Kurt Dostal
Wildlife Habitat Institute
1025 East Hatter Creek Rd.
Princeton, ID 83857

Dear Mr. Dostal:

I am responding to your request for information on special status species associated with T43N R1E S5,8,9,15,16 along the St. Maries River. Following is a species list.

Animals

bull trout (LT) - St. Maries River.
westslope cutthroat trout (SC) - St. Maries River.

Plants

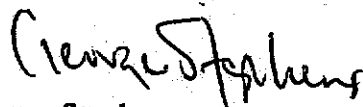
Tauschia tenuissima (Leiberg's *Tauschia*) - BLM Watch species; located in and adjacent to the project sections.
Carex hendersonii (Henderson's sedge) - BLM and USFS Sensitive species; located ca 3 miles SE of the project area.

LT = Listed Threatened

SC = USFWS Species of Concern

If you have questions regarding this response, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "George Stephens". The signature is written in dark ink and is positioned above the printed name.

George Stephens
Fish and Game Data Coordinator

Please note: The quantity and quality of data collected by the Idaho Conservation Data Center (CDC) are dependent on the research and observations of many individuals and organizations. In most cases, these data are not the result of comprehensive or site-specific field surveys; many natural areas in Idaho have never been thoroughly surveyed. For these reasons, the CDC cannot provide a definitive statement on the presence, absence, or condition of biological elements in any part of Idaho. CDC reports summarize the existing information known to the CDC at the time of the request regarding the biological elements or locations in question. They should never be regarded as final statements on the elements or areas being considered, nor should they be substituted for on-site surveys required for environmental assessments.